IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.88 OF 1999

The Commissioner of Income Tax,
'Aayakar Bhavan' 31-C/2,
'E' Ward, Tarabai Park,
Kolhapur - 416 003. ...Appellant.

V/s.

Shri Bhogawati Sahakari Sakhar
Karkhana Ltd., Shahunagar,
Parite, Dist. Kolhapur ...Respondent.

Dr.P.Daniel with Mr.A.S.Rao for the Appellants.
None for the Respondent.

CORAM: DR.S.RADHAKRISHNAN &
J.H.BHATIA, JJ.
DATE : 8th August, 2005.

JUDGMENT: (Per J.H.Bhatia,J.)

1. This Appeal is preferred by the Revenue under section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal. The following substantial question of law is raised in the said Appeal.

> "Whether on the facts and in the circumstances of the case, the I.T.A.T. relying upon the Special Bench in the case of Shri Chhatrapati S.S.K.Ltd., reported in 198 ITR 78 (A.T.) was right in deleting the

additions made on account of Non refundable deposits, C.M.s Relief Fund, Area Development Fund, Cane Development Fund, Hutment Fund, Education Fund, Shri Y.B.Chavan Memorial Trust, and Interest on Non refundable deposits by holding that various funds/deposits collected by the assessee society out of sugarcane purchase price payable to the cane growers are not the Trading receipts of the assessee ?"

2. Heard the learned counsels for both the parties. Admittedly the subject is squarely covered by the authority of the Supreme Court in **Commissioner of Income Tax v. Shri Chhatrapati Sahakari Sakhar Karkhana Ltd. 270 ITR 1,** authority of the Division Bench of this Court in **Krishna Sahakari Sakhar Karkhana Ltd. v. Commissioner of Income Tax 229 ITR 557** and Judgment of this Court dated 28.6.2005 in a g**roup of Income Tax Appeals including Income Tax Appeal No.9 of 1999, The Commissioner of Income Tax II, Pune v. The Malegaon Sahakari Sakhar Karkhana Ltd. & Others**. In Chhatrapati Sahakari Sakhar Karkhana Ltd., the Supreme Court clearly held that in

view of the provisions of Co-operative Societies Act and rules in Maharashtra , Non-refundable as well as Refundable deposits are not the trading receipts and cannot be added to the income of the Society. It also held that interest payable on Refundable and Non Refundable Deposits is also an expenditure of the Society and is liable to be deducted from income taking into consideration Maharashtra Co-operative Societies Act, bylaws and the Government Directives. It was also held that the deductions on account of Chief Minister's Relief Fund, Y.B.Chavan Memorial Trust Fund, Hutment Fund are also not the trading receipts for the Society because the Society has to make over the same to the concerned funds. In **Krishna Sahakari Sakhar Karkhana Ltd. v. Commissioner of Income Tax ,** this Court specifically held that the deductions on account of Education Fund cannot be treated as trading receipts and are not liable to be added in the income of the Society.

3. The Supreme Court specifically held that the amounts realised on account of Cane Development Fund reach the Assessee sugar factory as its income and are utilised by it for the benefit of itself and its members, and therefore, deductions made for Cane Development Fund should be treated as the income of

the Assessee. The Supreme Court held that the receipts in the form of Area Development Fund always remain with the Assessee Society. As there was no material as to how that amount is spent, their Lordships left this point open for the fresh determination by the Income Tax Appellate Tribunal. Following the Supreme Court authority in the group of Income Tax Appeals decided by this Court on 28th June, 2005, this Court also gave direction that the question about the Area Development Fund be decided a-fresh by the Income Tax Appellate Tribunal taking into consideration all the facts and relevant directions.

4. In the result, Appeal is partly allowed. Order of the Income Tax Appellate Tribunal to the extent of Non-refundable Deposits, Interest on Non-refundable Deposits, C.M.Relief Fund, Hutment Fund, Education Fund and Shri Y.B.Chavan Memorial Trust Fund is maintained. The impugned order of the Appellate Tribunal to the extent of Cane Development Fund and Area Development Fund is set aside. The Income Tax Appellate Tribunal is directed to decide the question of Area Development Fund a-fresh after taking into consideration the material placed before it including the by-laws and directives issued by the

Government in respect of use of Area Development Fund.

No order as to costs.

(DR.S.RADHAKRISHNAN,J.)

(J.H.BHATIA, J.)